



DEPARTMENT OF REVENUE
INDIANA GOVERNMENT CENTER NORTH
100 N. SENATE AVE

COMMISSIONER'S DIRECTIVE #43
NOVEMBER 2016
(Replaces Commissioner's Directive #43 dated July 2014)
Effective Date: July 1, 2016 (Retroactive)

SUBJECT: Other Tobacco Products Tax

REFERENCE: IC 6-7-2

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY OF CHANGES:

This version of the directive is changed to reflect the enactment of SEA 381-2016, which increases the collection allowance from 0.006 to 0.007 of the amount of tax due.

INTRODUCTION

The purpose of this commissioner's directive is to provide guidance regarding the Other Tobacco Products (OTP) tax as it applies to the wholesale price of specified tobacco products and moist snuff taxed by the ounce. Also, guidance is provided as to who is a tobacco distributor as defined in IC 6-7-2-2 that is liable for the tax.

DISCUSSION

"Tobacco product" means:

- (1) Any product made from tobacco, other than a cigarette, that is made for smoking, chewing, or both; or
- (2) Snuff, including moist snuff.

"Moist snuff" means any finely cut, ground, or powdered tobacco that is not meant to be smoked or placed in the nasal cavity.

The OTP Tax is imposed on tobacco distributors per IC 6-7-2-7, which reads:

A tax is imposed on the distribution of tobacco products in Indiana at the rate of 24% of the wholesale price of the tobacco products other than moist snuff or for moist snuff, \$.40 per ounce, and a proportionate tax at the same rate on all fractional parts of an ounce. If the tax calculated for the fractional part of an ounce carried to the third decimal place results in the numeral in the third decimal place being greater than 4, the amount of tax shall be rounded to the next additional cent.

The distributor of the tobacco products, including a person who sells tobacco products through an Internet website, is liable for the tax. The tax is imposed at the time the distributor:

- (1) Brings or causes tobacco products to be brought into Indiana for distribution;
- (2) Manufactures tobacco products in Indiana for distribution; or
- (3) Transports tobacco products to retail dealers in Indiana for resale by those retail dealers.

A distributor, including a nonresident person who sells tobacco products through an Internet website, catalogs, or other media, must obtain a license before distributing tobacco products in Indiana. A license is valid for one year unless it is suspended or revoked by the department.

An Indiana resident unlicensed wholesaler/retailer purchasing tobacco products through an Internet website, catalog, or other media from a person not licensed as an Indiana distributor must register as a distributor and pay the tax on the wholesale price of the other tobacco products or, if purchasing moist snuff, pay the tax based on the number of ounces. A wholesaler/retailer failing to register and comply with the law commits a Class B misdemeanor. However, the offense is a Level 6 felony if it is committed with intent to evade the tax imposed or to defraud the state.

The distributor is required to remit the tax and file Form OTP-M (OTP monthly return) by the 15th day of each month, reporting transactions and taxes due for the preceding month. Any person who is liable for the payment of the OTP tax must file returns electronically and submit payments electronically. Electronic payments are made through an ACH Credit transaction.

A distributor who files a complete return and pays the tax due on a timely basis is entitled to a collection allowance of 0.007 of the amount of tax due.

The term "wholesale price" is defined in IC 6-7-2-6 as follows:

As used in this chapter, "wholesale price" means the net price shown on an invoice and at which the manufacturer of the tobacco products sells tobacco products other than moist snuff to distributors, excluding any discount or other reduction in price that is not shown on the invoice.

Temporary price reductions or discounts for the purpose of promoting certain tobacco products are deductible from the original price in determining the "wholesale price" of tobacco products if the finished tobacco product(s) container is prepackaged indicating a monetary discount. The "wholesale price" for other tobacco products prepackaged in multiple units is the actual price paid and not an imputed cost based on the manufacturer's price per single unit. Purchase discounts, quantity discounts, trade discounts, or any other reductions in price are deductible when determining the "wholesale price" of tobacco products for purposes of imposing the OTP tax if the discount is shown on the invoice.

A manufacturer, an importer, a broker, or a shipper of other tobacco products or moist snuff bringing such products into Indiana for the purpose of giving such products away for any type of promotional purpose must pay the tax due on all such products. In applying the OTP tax to samples, the "wholesale price" is the standard price charged for the single-unit tobacco product before deduction of any discount, including temporary promotional discounts.

A handwritten signature in black ink, appearing to read "Chris Atkins", is written over a horizontal line.

Christopher Atkins
Commissioner